HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 768 of 2004

Sri Arvind Kumar ..... Petitioner

Versus

Addl. District Judge III, Dehradun
Others ..... Respondents

Sri V.K. Kohli Sr. Advocate for the petitioners
Sri Nagesh Agarwal for for the respondent no.2 and 3.

Dated: 18.8.2004

Hon. Rajesh Randon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 4.8.2004 passed by the Addl. District Judge, Dehradun.

Briefly stated the facts giving rise to the present writ petition re that the petitioner's wife Smt. Alka Sharma was posted as Group A Central Service Officer (Indian Defence Account Service). She went on four years' deputation to Survey of India Dehradun on 1.1.999. A residential House no. C-4, Hathibarkala Estate, Dehradun was earmarked to her post and was allotted to her. On 27.8.2003 order was passed by the respondent no.3 under U.P. Public Premises (Eviction of Unauthorised Occupants) Act The petitioner has preferred an appeal before the District Judge, Dehradun. Along with the

appeal he also moved an application under section 5 of the Limitation Act for condonation of delay in filing the appeal. The Additional District Judge III vide order dated 4.8.2004 rejected the application under section 5 of the Limitation Act.

The assertion of the petitioner is that he was not aware regarding the proceedings under U.P. Public Premises (Eviction of Unauthorised Occupants) Act. The petitioner has submitted that night he was heard nor was given opportunity for hearing. The counsel for the petitioner has referred the case of Radha Krishan Rai vs. Allahabad Bank and others (2000) 9 SCC 733, where a delay of 1418 days was condoned. In the present case order was passed on 27.8.2003 and the appeal has been filed on 9.9.2003. The petitioner should have been given opportunity of hearing before rejecting the application under Section 5 of the Limitation Act, on merit.

The need of society is that there should be justice oriented approach and the appeal should not be rejected only on the ground of technicalities. The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

"Law Courts will lose their efficicacy if they cannot possible respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In 2001 (9) SCC 106 Vedabai Alias Vaijayanatabai Baburao Patil the Apex Court has also held that prigmatic attitude should be adopted by the Courts and a distinction made between case in which delay in inordinate, thus giving rise to

question of prejudice to the other side and requiring a morel cautious approach and a case where delay is of a few days only.

In view of the aforesaid fact, the writ petition is allowed. The delay in filing the appeal is hereby condoned. The lower appellant Court is directed to decide the appeal on merit.

No order as to costs.

(Rajesh Tandon J.)

18.8.2004
*Dhyani